



POLICE DEPARTMENT

July 12, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Catiria Gonzalez
Tax Registry No. 938592
43 Precinct
Disciplinary Case No. 83832/08

Police Officer Francisco Alvarez
Tax Registry No. 942946
46 Precinct
Disciplinary Case No. 83886/08

The above-named members of the Department appeared before me on November 10, 2009 and January 25, 2010, charged with the following:¹

Disciplinary Case No. 83832/08

1. Said Police Officer Catiria Gonzalez, assigned to the 43rd Precinct, on or about August 14, 2007, while off-duty, inside said Police Officer's residence located in [REDACTED], New York, did fail and neglect to safeguard her service firearm, a Smith & Wesson 9mm Model #5946, serial #BDH5966, in that said Probationary left said firearm loaded inside a safe unbolted to the floor or otherwise unsecured in said residence.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS – GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

2. Said Police Officer Catiria Gonzalez, assigned to the 43rd Precinct, on or about August 14, 2007, while off-duty, inside said Police Officer's residence located in [REDACTED], New York, did fail and neglect to safeguard her off-duty firearm, a Smith & Wesson Model #3914, serial #BLK1870, in that said Probationary left said firearm loaded inside a safe unbolted to the floor or otherwise unsecured in said residence.

¹ Respondent Gonzalez and Respondent Alvarez resigned from their positions with the Police Department following the conclusion of this administrative hearing.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS – GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

Disciplinary Case No. 83886/08

1. Said Probationary Police Officer Francisco Alvarez, assigned to the 46th Precinct, on or about August 14, 2007, while off-duty, inside said Probationary Police Officer's residence located in [REDACTED], New York, did fail and neglect to safeguard his service firearm, a Smith & Wesson 9mm Model #5946, serial #BDX5420, in that said Probationary left said firearm loaded inside a safe unbolted to the floor or otherwise unsecured in said residence.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS – GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

The Department was represented by Rita Bieniewicz, Esq., and Michelle Alleyne, Esq., Department Advocate's Office, and the Respondents were presented by John Tynan, Esq.

The Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 83832/08

Respondent Gonzalez is found Not Guilty.

Disciplinary Case No. 83886/08

Respondent Alvarez is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Rommel Perez, Sergeant Douglass Maresca, and Police Officer Emilio Alvarado as witnesses.

Police Officer Rommel Perez

Perez has been with the Department for three-and-a-half years and has been assigned to the 45 Precinct for the last two-and-a-half years. He is in the 45 Precinct Conditions Team, which addresses quality of life crimes, graffiti, and radio runs that involve burglary, robbery, grand larceny auto, rape, murder and assault.

Perez said that on August 14, 2007, at 2036 hours, he was assigned to a sector car in uniform with his partner. They received a radio run of a burglary in the past and responded to the Respondents' address. Upon arrival at that location, they were met by the patrol supervisor. They proceeded into the building and were met by Respondent Gonzalez, who stated that her apartment had been burglarized. They entered the apartment and he saw Respondent Alvarez sitting on a couch in the living room. He said he did not notice any signs of forced entry on the door. He looked at the lock cylinders, the edges around the door and the door seals and "didn't see anything." There was no damage to the door jamb.

Perez said the bedroom "was ransacked. It looked like somebody had taken all the drawers and dumped them all over the place. There was uniforms all over and clothes all over." He described the living room as in "fair condition." As far as valuables in the living room, he said there was a flat screen television and a desktop computer.

Perez said that Respondent Gonzalez proceeded to tell the officers that the safe that was in the closet was missing. She said it contained "two service weapons and one off-duty weapon, documents, birth certificates, passports." He said that Respondent Gonzalez described the safe's location as inside the closet in the bedroom, on the left-hand side of the closet. He said he observed that the closet was a "regular size closet" with "shoes on the floor, some ammo boxes on the right-hand side against the wall." The closet had a hardwood floor. He noticed "shoes all over the place...but there was a void there. It looked like something was there, but it was removed." He denied that there was an indentation or discoloration in the floor. It did not look like something had been on top of the shoes, "but the shoes looked like they were surrounding something." He agreed that "there was a hole in between the shoes," and that the hole was "probably square shaped." He did not recall seeing any bolt marks or holes in the closet floor.

Perez said the apartment was checked for points of entry. The bedroom windows were closed and the kitchen window had a locked metal gate on it. He said Respondent Gonzalez described the safe to him as "heavy," requiring "two people to carry it," and "about a hundred to a hundred twenty-five pounds." He noticed that there were three locks on the front door, including the deadbolt. He said Respondent Gonzalez could not remember if she had "locked the top lock with the deadbolt." He did not recall any other doors to this apartment.

On cross-examination, Perez said "the square on the floor of the closet" was "[t]hree feet by five probably." He said the superintendent of the building, who lives in the building, was spoken to, and the building and area around the building was checked for security cameras and none were found. Perez said that in August 2007, he was not in

the conditions unit and was on “regular patrol.” He said that there were burglaries, but denied that there were burglary patterns in that neighborhood. He agreed that the Respondents immediately told him that they had firearms in the safe. He said that the bedroom appeared to be ransacked and that based on his experience, the apartment looked like it had been ransacked.

Sergeant Douglass Maresca

Maresca has been a member of the Department for 19 years. He has been a sergeant since 2001 and has worked in his current command, the Bronx Investigations Unit, for more than three years. In his current position, he assists duty captains and duty inspectors in investigating incidents involving members of the Department. The burglary in this case was the first one he responded to as a member of the Bronx Investigations Unit, however, before that, he has “been to plenty of burglaries.”

On August 14, 2007, he was called to investigate the thefts of the Respondents’ firearms. He responded to the apartment, which he recollected “seemed in good order. The only room in disarray was the bedroom itself.” He said the Respondents claimed that a safe was removed from their apartment and that the “[s]afe contained some personal documents: Birth certificates, diploma and three firearms.”

Maresca said that he was not the first officer to arrive on the scene and that members of the 45 Precinct had responded first. The first thing he did when he got there was to go through the apartment “to see the condition and how things were situated.” He checked for signs of forced entry and did not find any kind of forced entry at all. He said he checked the front door and locks at the front door for signs of forced entry. He also

checked the window adjoining the fire escape and said that the windows were coated with a heavy film of dirt on the outside. He said, "There were no smudges, no tool marks and the window was in a closed position." He believed there were three locks on the front door. He observed that the living room "seem[ed] to be in order. Everything was in place," which he said did not coincide with the state of most burglaries he has responded to. The kitchen was in order, as well. Upon entering the bedroom, he said that it "seem[ed] to be out of order. The drawers were open. There were items on the floor and it looked like the bedroom had been gone through." He acknowledged that he personally did not look at the closet.

As a result of the investigation, Maresca proceeded to the 45 Precinct station house, where the first responders and two Respondents were interviewed. He agreed that he was present for the official Department interviews of both Respondents, but did not recall if either one had a receipt for the safe that was reported stolen. He said that they described the safe as "square in shape, gray, Brinks safe, approximately two by three feet, weighing extremely heavy, weighing between a hundred and twenty and a hundred and fifty pounds."

When Maresca asked Respondent Gonzalez where she was during the date of the incident, she stated that she was home until approximately 11:00 a.m. After that time, she went shopping for a car with her boyfriend, Respondent Alvarez, in Long Island at a location that Maresca did not recall.

The Respondents told Maresca they purchased the safe approximately four to five years ago and the safe was a "combination with a key so it required both." He did not recall the Respondents' response when they were asked where the key was.

Maresca testified that, to the best of his memory, he has responded to “a burglary or two where there was no sign of forced entry.” He agreed that, based on his training and experience, when a door has been opened and there is no damage to the door jamb or any apparent damage to the lock, he would assume that the lock was opened with a key; and if entry had been gained by means other than a key, then there would normally be damage to the door jamb and the key hole.

Maresca stated that, in the past, he has advised burglary victims to purchase a dead bolt because they are “fairly secure locks” that require a large amount of force to “defeat.” He said, “Generally to defeat that with a large amount of force, someone is going to hear and call 911.”

Maresca agreed that the Patrol Borough Bronx Investigations Unit covers all precincts within the Bronx.

On cross-examination, when asked if he doubted that the apartment was burglarized, Maresca responded, “It’s just funny to me that only one room was ransacked.” At other burglaries that he has responded to, more than one room was ransacked and there was generally another item taken besides the missing items, such as a suitcase or pillow case to carry the materials out of the apartment. He stated that he did not recall that Respondent Gonzalez’ grocery cart was taken out of the apartment, but it would not change his opinion if he was made aware that the grocery cart was taken to transport stolen property out of the apartment. He denied that burglars are more inclined to use a sack than a wheeled cart to move property. When asked why, he stated, “There were other valuables in the apartment that were not taken that were lying right out in the open.”

Maresca stated that he did not know what a safe is used for, but then acknowledged that it could be used to store valuables. In his 19 years of experience with the Department, he did not believe that a safe would have some type of allure to burglars because they are not targeting a safe in the course of a burglary. He conceded the possibility that it might have some allure if the burglar knew of its presence.

Maresca said that besides storing valuables, a safe could be used to protect documents. He agreed that there is a certain value in birth certificates, driver's licenses, and "identity documents," for which there is an illegal demand for their use in other crimes.

Maresca stated that the apartment was fingerprinted but denied that he personally interviewed the landlord. Although someone, during the investigation, did ask if anyone else had access to the key of the apartment, Maresca did not interview anyone who had access nor did he know if anyone interviewed such a person.

Maresca agreed that he investigated the Respondents' failure to safeguard their firearms. He stated that he did not ask anyone who may have had access to the firearms to see if they had taken them because "[t]he only one [he] knew had access to the firearms was the two officers." He did not know who had access to the apartment and said that, as far as he knew, "[the Respondents] were the only two that had access to the apartment."

Maresca stated that he does not live in an apartment building, but did so previously. He agreed that he knew who a superintendent is and that part of his or her responsibilities is to have access to an apartment in case of emergency. He denied speaking to the superintendent who had access to the apartment nor to anyone from the

Firearm and Tactics Section regarding the storage of firearms.

Maresca agreed, once again, that his responsibility was to investigate whether the Respondents safeguarded their firearms. When asked what section of the Patrol Guide pertained to safeguarding a firearm, he responded, "I have to look it up," acknowledging that he did not know it "off the top of [his] head." When told by the Respondent's counsel that, twice a year, the Firearms and Tactics Section recommends that a firearm be safeguarded by placing it in a safe, Maresca stated, "I would have to speak with them. I don't know what they recommend or what they don't recommend." He agreed that he attends the range twice a year, but denied being told to keep his firearm in a safe. In his 19 years of experience, with 38 visits to the range, he has been told "every time" to keep his firearm secured but did not recall if he was told to keep it in a safe. He stated, "To me, it's not an issue. I don't keep my gun in a safe. I don't keep my gun at home." He agreed that you are allowed to keep a firearm at home, but he does not have a safe. He acknowledged that he has brought his firearm home during his 19-year career, but he denied keeping it in either a safe or a shoe box.

On redirect examination, Maresca testified that he keeps his firearms at work in his locker. He stated, "Me personally I don't have a need to carry my gun home so I leave it in my locker. Safest place for me to keep my gun." He explained that he has children at home and wanted to avoid them "getting at [his] gun." He also wanted to avoid a situation, like this one, where his home is burglarized resulting in the loss of his firearm. He said that he has kept his firearms in his locker for 15 years and agreed that having a safe at home was not important to him because of the procedure by which he keeps his firearms at a Department facility.

Maresca said that he was not aware of how the burglary allegation of the Respondents' apartment was closed out because it was not his responsibility to know that. He stated that his assignment, with regard to the Respondents, was to assist the duty captain in conducting a preliminary investigation into "[t]he loss of the firearms, not the burglary itself." When asked how he knew it was "okay" to keep his firearms within the Department locker room, Maresca stated, "That's a secure facility. There is only police officers that are there. It's manned 24 hours a day."

During further cross-examination, Maresca testified that he did not investigate the "burglary portion of the complaint." He could not say whether the detective squad classified it as a burglary or not, but he knew "there was a 61 or a complaint report taken for a burglary." He denied investigating the filing of a false report by either Respondent and did not recall if he contacted the detective squad to ascertain whether there were doubts about the Respondents' burglary allegation. He stated that he spoke with Sergeant Mankeni from the 45 Precinct Detective Squad, who informed him that "the outcome of their investigation that they had exhausted all leads and the case had been deemed a burglary."

Police Officer Emilio Alvarado

Alvarado has been a member of the Department for 13 years. He has been a firearms and tactics instructor with the Firearms and Tactics Section for the past six years. Prior to his current assignment, he worked in the 25 Precinct and served in the Marine Corps for nine years. He said that New York State requires members of the service to attend firearms training once a year, while the Department requires training

twice a year. He said that the curriculum covers the safeguarding of weapons from unauthorized use and theft, the appropriate use of devices such as cable guards and trigger guards to make weapons inoperable, and the use of safes or other means of protecting a weapon from theft or unauthorized use.

With regard to safes, Alvarado said that members are instructed, "To use one that would make it as difficult as possible to have that weapon stolen as well as used." While dimensions are not specified, it is specified that the weapons be secured within the safe and that the safe is "secured somehow to an immovable object such as the wall, a support structure, support beam inside the wall, drywall, the floor." In his training and experience as an instructor, the bolting of a safe to the ground or to another structure has "always been stressed."

Alvarado said that he invites members of the service with questions concerning the safeguarding of firearms to contact him "[e]very day" and he receives phone calls from members asking for guidance on how to store or safeguard their firearms "[m]ultiple times a week." He said he advises members who inquire about bolting or securing a safe when they live in a rental unit "to follow the instructions that come with the safe, and if they are uncertain about how to secure the safe, to contact the superintendent or landlord and ask them what would be the safest way to do so without damaging the apartment." Additionally, members are authorized to secure all weapons in their Department lockers or safeguard the weapons at a police precinct.

Alvarado agreed that these methods of safeguarding firearms are discussed during Department training sessions, and that members are instructed as to the Patrol Guide requirements of when they should be armed and when they have discretion to not be

armed. While it has come up, the issue of locking the front door of one's house or home with regard to safeguarding of firearms is "usually something that's left to common sense." In his firearms and tactics instruction, he refers to the Recruit Guide, the Patrol Guide and the New York State Penal Law.

Alvarado described Department's Exhibit (DX) 1 as copies of the Recruit Guide and photographs of safes that are used during recruit training. He said that while his instruction involves the use of PowerPoint bullets, the information contained therein is the same. He said a firearm placed in an object that can be moved is safeguarded from unauthorized use but not from theft as that object itself can be stolen. The goal of his instruction regarding the safeguarding of firearms is for members to "understand the severity of not safeguarding the weapon, and...the potential danger of having a weapon find itself in someone else's hands."

During cross-examination, Alvarado agreed that leaving a gun in a cardboard box, a dresser drawer or a metal filing box would be unsafe. Referring to the photographs of safes in DX 1, he said the safes depicted "are examples of objects to be used to safeguard weapons," although the Department does not endorse any particular safe. He agreed that any safe that is made for the storage of firearms would be acceptable to the Department for safeguarding one's gun. When asked if any of the photographs show devices that allow one to bolt the safes to the floor or the wall, he said such devices are located inside the safe so that the safe can be secured from the inside with a bolt, and it is not something that is very easily seen from the outside.

According to Alvarado, if a safe weighed between 100 and 125 pounds, its immobility would depend on the strength of the person looking to steal it. He guessed

“anything can be stolen if somebody put enough [in]to it. The responsibility is to make it as hard as possible.” Being that he himself is able to lift 125 pounds, he did not believe that a safe weighing that amount is not in and of itself enough to safeguard a firearm.

Alvarado conceded that no where in the documents contained in DX 1 does it state that a safe has to be bolted to the floor, just that it is made immobile. He said that the documents do not define what “immobile” means. He agreed that he teaches recruits and other members that most burglaries are “hit and run” type burglaries, as stated in DX 1. While he did not know the number of instances, safes of different weights have been known to have been stolen and cut open.

Alvarado did not specifically remember talking to either Respondent about how they should secure a safe to the floor. While he had not seen their training records and had no idea who trained them, he opined that they were instructed specifically about securing safes if they maintained their Department training by attending the range twice a year since they graduated the Police Academy. He further stated, “They graduated the academy, they have been instructed.” He had not reviewed their records to see if they were specifically instructed on this in the Police Academy or if they were reinstructed in their biannual appearances at the Firearms and Tactics Section.

In regard to the photographs of safes in DX 1, Alvarado read a passage in the document that stated, “The following are examples of firearms storage cabinets and are recommended by the Firearms and Tactics Section in addition to the recommended use of firearms safety locking devices.”

On redirect examination, Alvarado agreed that recruit instruction includes written material accompanied by verbal instruction, that the topic of safeguarding firearms is

taught every time that an instruction is given, and that it is covered during the two biannual lectures that each member is required to attend. He denied that it was his responsibility to review each member's personal attendance at these training sessions and said that is usually tasked to the training officers at the officer's command. He agreed that the topic of safeguarding firearms is taught with every lecture.

During further cross-examination, Alvarado agreed that he was not asked to review any records concerning the Respondents and their training with the Firearms and Tactics Section when he was called to testify. He could not recall reviewing their records or being asked to do so. He said he "[r]eviewed the curriculum as covered."

He agreed that locking a safe to safeguard something and hiding the safe so that it is not easily visible or found would be "commonsensical."

During examination by the Court, Alvarado said that the PowerPoint presentation used during firearms training is created by "two instructors that deal with curriculum specifically." He said the PowerPoint is "standard" and every instructor uses the same one. He said the portion concerning safeguarding firearms is "the last thing covered after care and maintenance with regard to using locking devices and safes." He said the topic of bolting a safe is covered as far as it can immobilize a safe. He said for some safes, for example a 400 pound safe, its weight is its immobilizing factor. Each safe has its own safeguarding measures.

During further cross-examination, Alvarado did not know if the Firearms and Tactics Section has ever done a review to determine what percentage of police officers use safes that weigh between 300 and 400 pounds. When asked if his unit developed any surveys or statistics to determine how many officers actually own safes to secure their

guns in, he replied, "The ownership of a safe is a personal choice...The measure in which they make that weapon safe is left up to them." Alternatively, he said that an officer can leave his firearm at his command or another police command. While the use of a safe is not mandated by the Department, Alvarado said the safeguarding of weapons is.

The Respondents' Case

The Respondents testified in their own behalf.

Respondent Gonzalez

Respondent Gonzalez was appointed to the Department in July 2005 and is currently assigned to the 43 Precinct. In August 2007, she resided in [REDACTED], within the confines of [REDACTED] Precinct. She currently lives with her boyfriend, Respondent Alvarez. They now work in the same command, but this was not the case in August 2007. On August 14, 2007, she had lived in her apartment for "several months." The apartment was located in a multiple dwelling building with about four or five floors. She lived in a one bedroom apartment on the "last floor," which she believed was the fourth floor. The building did not have an elevator.

Respondent Gonzalez said that in August 2007, she owned a service firearm as well as an off-duty weapon. At the time, when she was not on duty, she kept her firearms in her locker at work or in her safe at home. She described the safe as "very heavy. More or less square, rectangular. Square to rectangular box." She said the safe weighed "over a hundred pounds" and was opened with a key and a combination. As of August 14, 2007, she had owned the safe for "several years." It was kept in a corner inside a

closet and was “[p]artially obscured.”

Respondent Gonzalez denied that there was any device located inside the safe that would allow her to bolt it to any other object; that the safe came with any instructions on how to bolt it to the floor or wall; or that she or Respondent Alvarez were working on August 14, 2007. That day, the two Respondents were going to Long Island to purchase a car and left the apartment between 11:00 and 11:30 a.m. At the time, she was not aware of any break-ins or burglaries in her building or her apartment. The only crime occurring in that building that she had knowledge of occurred five or six years prior to her moving there. When she left her apartment, she locked the bottom of the two locks on her door.

Respondent Gonzalez said she returned to the apartment between 8:00 to 8:30 p.m. She did not observe any damage to her door, but upon entering her bedroom, she saw all her clothes “all over the floor.” She inquired of her boyfriend what happened to the bedroom and he immediately went to where the safe was in the closet and “[h]e found that there was no safe there.” She said that at that point, she surmised that someone had entered her apartment and taken her safe. She also noticed that her black metal shopping cart with four wheels was missing.

Upon noticing that her safe was missing, Respondent Gonzalez said she called 911 and told the operator that she was an off-duty member and that her safe containing her firearms was taken. She then went downstairs to await the officers. A supervisor arrived on the scene and she made a report about the burglary that day. Presently, she does not know if her guns or her safe was ever recovered. Fingerprints were collected from her apartment. To the best of her knowledge, she does not know if any arrests or

convictions were made concerning the burglary of her apartment. She remained in the apartment for several months after the incident but no longer lives there. Now she stores her firearm in her Department locker and she does not ever bring it home.

On cross-examination, Respondent Gonzalez said that on August 14, 2007, she was going car shopping on Long Island at a dealership named "Five Towns" and that she and Respondent Alvarez had made these plans "a couple of days" prior to going there. Respondent Alvarez drove them to Long Island in a car registered in Respondent Gonzalez's name. She denied that she planned to consume alcoholic beverages while out car shopping; that she planned to do anything other than car shopping on Long Island; or that there was any reason why she did not carry her firearm with her that day. She is familiar with the Patrol Guide section that outlines when she is and when she is not supposed to have her firearm with her, but in her opinion, car shopping did not fall into any of those categories.

Respondent Gonzalez said that prior to August 14, 2007, the last time she had been at the range to be instructed was "[e]arlier that year." She had never gotten into any sort of trouble for not attending a scheduled firearms training session. She said there would be a "reminder" if she missed one, but she has never received such a reminder. She said she was in compliance with the Department requirements for attending firearms and tactics training sessions.

Respondent Gonzalez agreed that it was her opinion that the safe was heavy, but she could not testify with certainty as to how much it actually weighed. She kept the purchase receipt and instruction manual that came with the safe, but she no longer has that in her possession today. She never showed the officers that responded to her

apartment the receipts so that they could have determined themselves how much the safe weighed. She kept the key that went with the safe with her.

Respondent Gonzalez recalled that on August 14, 2007, she locked the “bottom lock” of her door. She did not recall locking the deadbolt on her door, the reason being she “[j]ust forgot.” She did not recall if, when she moved into the apartment, there was a hole in the door where a prior tenant may have removed their deadbolt and taken it with them when they moved. She said it was Respondent Alvarez’s decision to install a deadbolt in the door. She lived in the apartment for “several months” before she had the deadbolt installed. She learned that there was a prior burglary in the building from a neighbor who lived on the same floor.

Respondent Gonzalez did not remember how much the safe cost when it was purchased in 2000. The reason for the purchase of the safe was to keep her valuables. At the time of the burglary, the safe contained her firearms, documents, birth certificate and jewelry. To the present date, she has never received notification that either of her firearms was recovered in any way. She and Respondent Alvarez were physically together in the store when they purchased the safe, and neither were a member of the service at that time. She did not recall how she got the safe from the store to her residence nor from which store it was purchased. The safe’s brand was “Brinks.”

Respondent Gonzalez said that prior to going car shopping on August 14, 2007, she did not contemplate taking her firearms and placing them in her Department locker instead of leaving them in the safe in her home. She agreed that the topic of safeguarding her firearms was mentioned in training sessions, that the issue of safes was brought up, and that she was told and instructed to do everything in her power to make sure her

firearms were safe. When asked if it was fair to say that failing or forgetting to lock the deadbolt of her apartment in an urban area such as [REDACTED] with two firearms inside was not doing everything she could do to safeguard her firearm, Respondent Gonzalez stated, "I did everything to secure the firearms. I did everything in my power to safeguard my weapon."

Respondent Gonzalez said she now locks the door of her apartment with a deadbolt "because nobody else has access to those keys besides who lives in the apartment." She agreed that the door lock she recalled locking on August 14, 2007 was the lock that the apartment came with, that it was possible that the superintendent or prior tenant may still have had access to that apartment, that she had gotten the deadbolt because she was not a hundred percent certain that just the bottom lock was a hundred percent secure, and that failing to lock the deadbolt was leaving her door less than secure.

Respondent Gonzalez said there was no reason she did not bolt the safe to the floor or to the wall. There was no instruction on how to bolt that particular safe and there was nothing on the bottom of the safe to bolt it with. She got the safe figuring it would be appropriate for securing firearms and did not look further into getting another safe that bolted at that time. She agreed that she was going to purchase or upgrade her current safe because she felt that the safe she had was not quite enough to hold firearms.

On redirect examination, Respondent Gonzalez explained that she thought about getting another safe because the size of it was not big enough to hold her firearms, not because it was not safe enough. She paid for the safe out of her own proceeds. She did not give anyone permission to go into her apartment and take any of her property out on August 14, 2007. She "definitely" locked the door when she left her apartment.

On examination by the Court, Respondent Gonzalez described her safe as a “big size square box type safe” not more than a foot in height. She had never moved it within the closet from the position it was in. She was able to move it by “[j]ust dragging and pushing a little, but not by picking it up. She never tried picking it up but she could shift it around “[a] little bit, but that’s how heavy it was.”

Respondent Alvarez

Respondent Alvarez was appointed to the Department in January 2007, and after completing the Police Academy, he was assigned to the 46 Precinct. He is currently assigned to the 43 Precinct. On August 14, 2007, he owned one firearm, which, when he was off-duty, he safeguarded in a safe in the apartment in [REDACTED] that he shared with his girlfriend, Respondent Gonzalez. As of that date, he had owned the safe for a “[c]ouple of years.” He described the safe as “[a]bout 3 by 2 feet” and weighing “[o]ver a hundred pounds.” He did not recall where the safe was purchased. It contained two locking devices – a key and a combination dial. There were no holes drilled through the safe wall for use in bolting it to a wall or floor. He lived on the last floor, which he believed was the fourth. When he moved to that apartment, he and his father carried the safe up the stairs from the street to the fourth floor as there was no elevator in the building. He put the safe in the bedroom closet.

Respondent Alvarez said that on August 14, 2007, he went out for the day and Respondent Gonzalez locked the door. When he returned to the apartment and went to the bedroom, he “saw a mess. All the drawers were open. Everything was thrown on the floor, and [he] just screamed.” He immediately went straight to the closet and discovered

the safe was gone. He could not tell if it looked like it had been dragged on the floor. Respondent Gonzalez called 911, a sergeant and officers responded, and a report was made concerning the incident. Respondent Alvarez said that at that time, he had one firearm and had to buy a replacement. The stolen firearm has never been returned to him.

On cross-examination, Respondent Alvarez could not recall from which store he purchased the safe, but believed the store was located in Manhattan. He did not recall how he got it home. His father was 43-years-old at the time he moved the safe into his house and he and his father were able to carry it to the top floor of a walk-up building.

Respondent Alvarez agreed that it was his decision to get a deadbolt installed in that apartment for security. He said there was no reason why he did not take his firearm with him when he went car shopping on August 14, 2007. He agreed that it was his practice not to have his firearm with him when he was off-duty, saying, "usually it's in the safe or in the locker." He was not planning on doing anything that would prevent him from carrying his firearm with him on August 14, 2007, and it was purely a discretionary decision to leave his firearm at home that day.

Respondent Alvarez could not recall when he had last been to firearms training prior to August 14, 2007. He knew he had attended training, but denied it was recently before the incident. He did not remember whether or not he knew he could bring his firearm to Long Island. At the time of the incident, he had been a member of the service for about nine months and was about three months out of the Police Academy. He agreed that it was "fair to say that [he] had undergone firearms training fairly recently" before the incident. He agreed that since being a member of the service, he has attended firearms training sessions regularly. He has never received any sort of discipline or

warning for missing or failing to attend the firearms and tactics training session. When asked if he recalled being told about safes in the Police Academy or the safeguarding instruction lessons, he recalled "seeing paperwork. That's about it." He agreed that he paid attention when he was in the training sessions.

Respondent Alvarez said he saved the receipt and manuals that came with the safe when he purchased it, but he did not remember where they are. He said the safe weighed "over a hundred pounds." The weight of the safe was something he considered "to a point" when he purchased it. Another factor he considered when he bought the safe was how many locks it had. He had no idea why the deadbolt was not locked on August 14, 2007.

On examination by the Court, Respondent Alvarez said he was able to move the safe from the position it was in the closet "[j]ust a little bit. Not like for...a long distance." He never carried it around the apartment. When asked if he ever considered bolting that safe to the floor or to the wall, he replied, "Never came to in the future, but at that point, I mean, there were no holes there, and the apartment floors were really nice so." When asked if he could have gotten something to bolt the safe, he answered, "But there were no holes." When pressed if he could have bolted the safe had he used a drill gun, he said it would have been hard because the safe was made of "very strong material...It was made to sustain a long time fire. It was very thick." He opined that it could be done, but he did not believe he would have been able to do it. He agreed that the safe may have been made of a material that an "average drill gun" might not have been able to penetrate, so a "professional" would have had to come to see if it could be done.

Respondent Alvarez said that the detectives told him that they believed that the burglar entered the apartment with a "bump key," where a person uses "a special key and tap it with a hammer a little bit and it opens any regular lock."

FINDINGS AND ANALYSIS

Disciplinary Case Nos. 83832/08
Specification Nos. 1 and 2

Disciplinary Case Nos. 83886/08
Specification No. 1

Respondents Gonzalez and Alvarez are similarly charged respectively with failing to safeguard their service firearms in that they left their firearms in a safe unbolted to the floor in their residence. In addition, Respondent Gonzalez is charged with failing to safeguard her off duty firearm in the same manner. The Respondents are found Not Guilty. Evidence adduced at trial established that the Respondents had been dating each other for some time and purchased a safe prior to becoming police officers. They stored valuables and important documents in the safe. Once appointed to the Police Department, Respondent Alvarez stored his service firearm in the safe. Respondent Gonzalez would store her firearms either at her command or in the safe at her residence.

The Respondents testified that on August 14, 2007, when they returned to the apartment after a day of car shopping, they found their bedroom ransacked. Respondent Alvarez checked the closet only to find that the safe they had hidden on the floor in the closet was gone. Investigators to the scene noted that only the bedroom appeared ransacked. They noticed that clothes were strewn about the bedroom and that in the

closet, there appeared to be a space that a square object had utilized in the closet. The 45 Precinct Detective Squad deemed the matter a burglary.

The Respondents were charged with violating Patrol Guide 204-08. A thorough review of the guide requires that members of the service safeguard their firearms at all times. There is no requirement that one use a safe to safeguard a firearm or that the safe, if used, be bolted to the floor. Although Alvarado testified that he would encourage members of the service to bolt a safe, there was no evidence presented to show that the Respondents were directed to do this. In fact, they testified that the safe weighed over 100 pounds and that the safe was not equipped with holes to bolt it; nor was it made out of a material that a regular drill could drill holes into it so that it could be bolted to a wall or floor. Respondent Alvarez testified that it never crossed his mind to take the safe to a professional to see if it could be drilled for holes.

The Respondents testified that they purchased the safe together. The safe was rectangular in shape and was less than two feet in height. Respondent Gonzalez testified that she could not lift the safe; that she could slide it on the floor a few inches using her foot. Respondent Alvarez testified that he had help from his father getting it into the apartment and that he did not lift it to move it within the apartment. He testified that he felt the safe was secure because of its weight, the location in the closet and also the fact that it closed with a key and a combination.

On the date in question, Respondent Gonzalez testified that she locked the apartment but did not believe that she used the dead bolt to further secure the apartment once they left to go car shopping.

In instances where members of the service were found Guilty of failing to

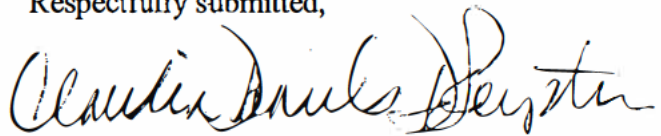
safeguard their firearms, the circumstances surrounding the loss of the firearm were important. For example, in Disciplinary Case No. 77150/01, a 15-year member of the service with no formal discipline was found Guilty of failing to safeguard his firearm by leaving it in the Department desk drawer, in Disciplinary Case No. 77812/02, a 15-year member of the Department forfeited five vacation days for leaving his firearm in an unattended vehicle while he went into a restaurant; or a 23-year member of the Department with no prior discipline forfeited five vacation days for leaving his loaded firearm on his girlfriend's mantel for three days. Even in instances where the firearm was taken as a result of a burglary, the circumstances surrounding the theft were examined. For example, in Disciplinary Case No. 79799/04, a 17-year member of the Department with one prior discipline forfeited 15 vacation days for failing to safeguard his firearm. In that instance, the Respondent stored his firearm under a pile of sheets and pillows in his bedroom closet, which was stolen when the Respondent's apartment was burglarized.

In this instance, the Respondents stored their firearms in a locked safe, which weighed over 100 pounds and they anticipated that the firearms would be secure when they stored them in that manner. Even the Recruit Guide chapter on Firearms Safety admitted into evidence (DX 1) states, "Short of installing a vault, there is no foolproof method of safeguarding the weapon at home from a burglar."

Accordingly, I find Respondent Gonzalez Not Guilty and Respondent Alvarez Not Guilty.

APPROVED
JAN 26 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials